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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 810

CONSOLIDATED PIPELINE CO., INC.
(a corporation),

Petitioner,

vs.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OCTOBER TERM, 1940

No. 810

CONSOLIDATED FREIGHTWAYS, INC.
(a corporation),
Petitioner,

vs.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

I. STATEMENT OF THE CASE.

A. The Agreed Facts.

Pursuant to the mandate of the California Legislature in Section 9 of the City Carriers' Act (California Statutes, 1935, Ch. 312, as amended, Deering's General Laws of California, Act 5134), respondent Railroad Commission of the State of California, after public hearings, by its decision and order dated March

26, 1936, established minimum rates for the transportation of property within the limits of the City and County of San Francisco, applicable equally to all "carriers" as defined in the Act. That definition is as follows:

> "(f) The term 'carrier' when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever engaged in the transportation of property for compensation or hire as a business over any public highway in any city or city and county in this State by means of a motor vehicle or vehicles."

The statute referred to was enacted expressly, in part, "to preserve for the public the full benefit and use of the public highways * * *" (Pet. p. 6; *Morel v. Railroad Commission,* 11 Cal. (2d) 488, 81 P. (2d) 144.)

Petitioner is engaged in the business, among others, of transporting and delivering shipments of general merchandise by motor vehicle within the City and County of San Francisco from rail depots and steamship docks to persons and firms located within the city limits. Such deliveries are made in accordance with instructions of shippers located outside the State of California who dispatch the shipments to petitioner by rail or water in consolidated or, as they are commonly called, "pooled" lots for economy in the freight charges of the rail or water carriers. The shippers arrange for petitioner's delivery service separately from their arrangements for the rail or water

movement, and there is no "common control, management, or arrangement" (Motor Carrier Act, Sec. 203(b); 49 U. S. Code 303(b)) between the petitioner and any of the rail or water carriers. Petitioner's rates and charges for this service, which are paid sometimes by the shipper and sometimes by the several receivers within the city, are less than the minimum rates and charges established for city carriers by respondent.

Respondent Railroad Commission, although considering the shipments so transported and delivered by petitioner within the City and County of San Francisco to be moving in interstate commerce, by its decision and order dated July 3, 1940 (R. p. 9), decided petitioner's delivery service is that of a city "carrier" within the meaning of the Act and ordered petitioner to desist from charging less for such service than the minimum rates applicable to city "carriers" generally. The Supreme Court of this State affirmed the respondent's decision and order (R. p. 19) by denying, without written opinion, petitioner's application for a writ of review. (R. pp. 1-13.) It is this decision of the State Supreme Court which petitioner seeks to have reviewed here.

Additional facts are stated in "Respondent's Answer to Petition for Writ of Review" (R. pp. 13-19), to which reference is hereby made.

B. Comments on Petitioner's Statement of the Facts.

It is not a fact that petitioner's charges for its delivery service are "according to rates filed, as re-

quired, with the Interstate Commerce Commission". (Pet. pp. 4, 10, 13.) As will hereinafter be shown (p. 15), there is no federal regulation of petitioner's delivery service from rail cars and steamship docks in San Francisco, nor is there any requirement or authority in law for filing rates or tariffs of charges therefor with the Interstate Commerce Commission.

That respondent's order applies only to petitioner's delivery service in San Francisco, and not to transshipments beyond San Francisco nor to deliveries of freight brought into the city on petitioner's motor freight lines (Pet. p. 4), is not due to any "concession" by respondent but to the fact that respondent's order is limited of its own force to operations subject to the City Carriers' Act, which does not apply to the transshipping service nor line-haul deliveries.

Whether or not petitioner's charges are described as "covering cost of labor for unloading, segregating, billing, reloading, and delivery" (Pet. p. 3), or constitute "primarily a charge for handling the freight at its depot and incidentally for the transportation of freight upon the streets" (Pet. p. 11), is beside the point. Petitioner's rates cover, and petitioner assesses them for performing, precisely the service to which respondent's minimum rates would clearly be applicable were the element of interstate commerce absent.

Whether petitioner's service be designated as "a pool car distribution service" or by any other name, it consists, in essence and substance, merely of local

drayage of small shipments. That even petitioner's customers outside the State of California so consider it is plainly evidenced by the excerpt in the record (R. p. 17) from a typical letter of delivery instructions, wherein the customer directed petitioner, in part:

> "The only charges you will collect from our customer are the drayage charges for the delivery of shipments to the customers located in your city."

C. Petitioner's Contentions.

Petitioner contends:

(1) That under the foregoing facts, the regulation of petitioner's delivery rates is an unconstitutional invasion by the State of exclusively federal power to regulate interstate commerce and the imposition on interstate commerce of direct and multiple burdens (Pet. pp. 10-11, 13-14; Br. pp. 17-21, 37);

(2) That there is no reasonable relation between regulation of petitioner's charges for its delivery service in San Francisco and the use or conservation of or congestion upon the public highways in that city, and therefore the order of respondent, and the City Carriers' Act "when applied to regulation of rates in interstate commerce", is "beyond the police power of the State as conferred upon it by the Tenth Amendment to the federal Constitution" (Pet. pp. 11-12, 14-15; Br. pp. 30-34, 37-38);

(3) That petitioner is deprived of its property without due process of law and denied the equal pro-

tection of the laws by the respondent's order, in violation of the Fourteenth Amendment to the federal Constitution, because it would compel petitioner to assume the status of a city carrier against its will and to make different charges for its delivery services at San Francisco than at other points where it is engaged in the same business. (Pet. pp. 12-13, 15-16; Br. pp. 34-37, 38.)

D. Respondent's Position and Objection to Issuance of Writ of Certiorari.

It is respondent's position:

(1) That the subject of regulation here does not require exclusive federal action but is primarily of local concern; that Congress has not acted in the matter and indeed has affirmatively expressed its judgment that it is a proper subject of State regulation;

(2) That respondent's order does not impose any improper burden, either "direct" or "multiple", on interstate commerce, but merely requires petitioner to observe the same rules applicable to city draymen in general, and is not different in its effect on interstate commerce from other rate regulation which this Court has many times approved;

(3) That the regulation is a legitimate exercise by the State of its authority to regulate the use of its highways in the interest of public welfare and safety.

Objection to the issuance of the writ of certiorari is rested upon the ground that no sufficient justification for the writ has been shown. No substantial

federal question is involved. The State legislation pursuant to which respondent's order was made is of the same familiar type as that which received the approval of this Court in *Stephenson v. Binford,* 287 U. S. 251, 77 L. Ed. 288. Its constitutionality has been sustained by the Supreme Court of California. (*Morel v. Railroad Commission, supra.*) No new or novel questions are presented in the application of the legislation to interstate commerce under the order of respondent here assailed. Every contention advanced by petitioner in attempting to show an improper interference with interstate commerce has been urged upon this Court many times in the past and rejected. The authorities principally relied on by petitioner in support of its contentions are without application to the facts of this case. Local regulations, applying to rates for interstate transportation and to instrumentalities of interstate commerce, imposed uniformly on interstate and intrastate commerce and otherwise lawfully within the State's power, affecting interstate commerce in the same manner as in the present case have repeatedly been approved by this Court. The petition presents nothing which requires the Court's further attention.

II. ARGUMENT.

A. RESPONDENT'S ORDER DOES NOT INFRINGE UPON THE EXCLUSIVE POWER OF CONGRESS OVER INTERSTATE COMMERCE.

1. The Principle Underlying Respondent's Order.

It is peculiarly within the province of the states to prescribe uniform regulations to promote safety upon its highways and to provide for the conservation of their use. Such regulation must necessarily be diversified in accordance with the many widely varying local conditions found from place to place. In each city there are substantial differences in the conditions affecting the use of the streets and highways, the degree of congestion thereon, the kind and volume of traffic moving over them, and the costs and other factors entering into the propriety of the charges exacted by those using the streets and highways as a place of business. Such matters, moreover, are essentially local in character in that they principally affect the welfare of the people residing in cities and localities in which the streets and highways lie.

Respondent's order here assailed rests on the doctrine that the subject of state action is one of those "matters of local concern, the regulation of which involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation in the absence of congressional action has for the most part been left to the states by the decisions of this Court, subject to the other applicable con-

stitutional restraints." *(South Carolina State Highway Dept. v. Barnwell Bros.,* 303 U. S. 177, 185; 82 L. Ed. 734.)

2. Petitioner's Authorities Do Not Support Its Contention.

It is petitioner's contention that respondent's order is an invasion of the exclusive power of the federal government to regulate interstate commerce simply because it subjects petitioner to regulation of its rates and charges. It is asserted, in effect, that any rate affecting interstate commerce is a matter of national concern.

The cases principally relied on by petitioner do not support this contention. *Wabash, St. L. & Pac. Ry. Co. v. Illinois,* 118 U. S. 557, 30 L. Ed. 244, involved an attempt by Illinois to regulate the rate for a single transit across state lines from Illinois to New York by a single carrier under a single contract, "without change of car or breaking bulk." (118 U. S. 568.) Such regulation, the Court held, must be "of a general and national character" and could not be "safely and wisely remitted to local rules and regulations." (118 U. S. 577.) The Illinois Court had believed that Illinois could apportion the rate charged for the whole route and regulate that portion which was determined to be for service in Illinois. This Court pointed out that if that could be done by Illinois, it could also be done by each of the other states through which the transit occurred, and that to permit each state "to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to per-

mit it," would be a "deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States." (118 U. S. 577.)

Here, where the service regulated is performed wholly within one city in a single state, and without common control, management, or arrangement for a continuous carriage from any point outside the city, no such multiplicity of state regulation could exist.

In the other case emphasized by petitioner, *Railroad Commission of Ohio v. Worthington,* 225 U. S. 101, 56 L. Ed. 1004, the regulation condemned, although of a transit occurring wholly within the limits of the State of Ohio, was directed solely and specifically to interstate commerce as such, and as distinguished from transportation of the same commodity in intrastate commerce. There the Ohio commission attempted to regulate the railroad's rate for the transportation of coal moving in interstate commerce, leaving untouched the carrier's rate for intrastate transportation of coal between the same points. This, the Court held, was an attempt to "directly regulate and control interstate commerce," (225 U. S. 111) and for that reason void.

Here the State of California is undertaking to apply its regulation to *all* commerce equally and without discrimination. There is no singling out of interstate commerce in order to control it, but only an effort to regulate the use of the state's highways for compensation. The *Worthington* case, therefore, is not, as petitioner claims, decisive of the instant case.

The other cases cited by petitioner in this part of its brief (p. 21) similarly differ from the instant case. *Brown v. Maryland,* 12 Wheat. 419, 6 L. Ed. 678, involved a license tax imposed upon all importers of foreign articles or commodities, the equivalent of a tax on imports. *Gloucester Ferry Co. v. Pennsylvania,* 114 U. S. 196, 29 L. Ed. 158, involved a tax on the capital stock of a ferry company operated between two states, measured by the dividends paid out of earnings derived entirely from the interstate ferry business, and which was thus a tax upon transportation between the two states or upon the property of the corporation because used to carry on interstate commerce. *Covington Bridge Co. v. Kentucky,* 154 U. S. 204, 38 L. Ed. 962, dealt with an attempt by Kentucky to regulate tolls over a bridge between Kentucky and Ohio for passage both from Kentucky to Ohio and from Ohio to Kentucky, which the Court declared was impossible for either state to accomplish, "at least in the absence of mutual or reciprocal legislation between the two states."

Thus, none of petitioner's cases supports the proposition that any and all state regulation of rates and charges for transportation of property moving in interstate commerce, or instrumentalities of interstate commerce, is necessarily void.

3. Regulation Similarly Affecting Interstate Commerce Frequently Has Been Upheld.

That rates or charges for interstate transportation, or for instrumentalities of interstate commerce, in situations comparable with the instant one, are matters

of merely local and not national concern, has been established by numerous decisions, including the following:

Cooley v. Board of Wardens, 12 How. 299, 13 L. Ed. 996;

Port Richmond & Bergen Point Ferry Co., v. Board of Freeholders, 234 U. S. 317, 58 L. Ed. 1330;

Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77;

Chicago, B. & Q. R. Co. v. Iowa, 94 U. S. 155, 24 L. Ed. 94;

Budd v. New York, 143 U. S. 517, 36 L. Ed. 247;

Brass v. North Dakota, 153 U. S. 391, 38 L. Ed. 757;

Packet Co. v. St. Louis, 100 U. S. 423, 25 L. Ed. 688;

Transportation Co. v. Parkersburg, 107 U. S. 691, 27 L. Ed. 584;

Ouchita Packet Co. v. Aiken, 121 U. S. 444, 30 L. Ed. 976;

Pennsylvania Gas Co. v. Public Service Commission, 252 U. S. 23, 64 L. Ed. 434;

Wilmington Transportation Co. v. Railroad Commission, 236 U. S. 151, 59 L. Ed. 508.

4. Congress Has Expressed Its Judgment That the Matter Is of Local Concern.

The view of Congress that this matter is one of local, not national, concern, in which action by a national authority is unnecessary, is evidenced by the Motor Carrier Act of 1935, Part II Interstate Commerce Act

(Public No. 255—74th Congress, app. Aug. 9, 1935, as amended; U. S. Code, Title 49, Secs. 301-327). There Congress comprehensively regulated many phases of interstate motor carrier transportation, including safety of operation, operative authority, and rates, but, by way of exempting operations within a municipality, provided (Sec. 203(b); 49 U. S. Code 303(b)):

> " * * * nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of Section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment, apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; * * *"

There is no "common control, management, or arrangement for a continuous carriage * * *" here (R. p.

5; Pet. p. 3), and the Interstate Commerce Commission has not found it necessary to assume jurisdiction in the City and County of San Francisco.

Furthermore, in the Transportation Act of 1940 (Public No. 785—76th Congress, Sec. 15, app. Sept. 18, 1940), Congress went even further and amended Section 204(a) of the Motor Carrier Act (49 U. S. Code 304(a)) by adding sub-paragraph (4a), reading, in part:

> "Sec. 204. (a) It shall be the duty of the [Interstate Commerce] Commission—
>
> * * * * * * *
>
> "(4a) To determine, upon its own motion, or upon application by a motor carrier, a State board, or any other party in interest, whether the transportation in interstate or foreign commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation solely within a single State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy declared in this Act. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this part. * * *"

In the same section, Congress added the further statement:

> "In any case where a motor carrier has become exempt from the provisions of this part as provided in this subparagraph, it shall not be considered to be a burden on interstate or foreign commerce for a State to regulate such carrier with respect to the operations covered by such exemption. * * *"

As the operation in question, therefore, is exempt from the Motor Carrier Act, there is no requirement or authority in law for filing a tariff of charges with the Interstate Commerce Commission, except in connection with shipments transported into San Francisco on petitioner's motor carrier line. (R. p. 4; Pet. p. 4; Motor Carrier Act Sec. 217(a), 49 U. S. Code 317(a).) Thus under the conditions of this case, Congress has not acted regarding the subject of state regulation here, and no rates or tariff of petitioner submitted to the Interstate Commerce Commission can properly have reference to or effect upon the service in question or the power of the State with respect thereto.

5. No Prejudice to Interstate Commerce Has Been Pointed Out.

Petitioner contends that "the uniform rate which petitioner has been charging throughout its almost nation-wide system will be destroyed" and "its customers exasperatingly confused" as a result of respondent's order. (Pet. p. 16; Br. pp. 35-36.) But the record does not show that any customer of petitioner uses petitioner's delivery service in more than one city, or, if any does, that any confusion or inconvenience would follow from respondent's order. The only possible inconvenience which petitioner

specifies is that a shipper would find it necessary to look for the rate for a delivery in another city in a different tariff from that for a delivery in San Francisco. If this constitutes an inconvenience, it is one which petitioner may easily avoid simply by including the San Francisco rates in its tariff. But the point is without substance in any event. It does not appear from the record that the tariff to which petitioner refers contains rates for movements beyond petitioner's breakbulk points; presumably they do not, and shippers having goods moving beyond the breakbulk points already consult additional tariffs without apparent confusion. Different rates are already in effect for the movement of goods transshipped beyond breakbulk points to other western cities, and for local switching and drayage in general (R. pp. 16-17), both at petitioner's breakbulk points and in the numerous other western cities where petitioner maintains no delivery service. This is necessarily the case, due to varying conditions from place to place; and uniformity has never been thought necessary to the free flow of commerce. Furthermore, the delivery charges are paid as often as not right in San Francisco by the receivers of the goods (R. p. 17).

Petitioner has therefore advanced no authorities inconsistent with the state action in this case, nor has petitioner demonstrated how such action in any manner improperly affects or obstructs the movement of interstate commerce.

B. RESPONDENT'S ORDER IS NOT INVALID AS A DIRECT BURDEN ON INTERSTATE COMMERCE NOR AS EXPOSING INTERSTATE COMMERCE TO "MULTIPLE BURDENS".

1. Petitioner's Contention Has Already Been Rejected by This Court.

Petitioner contends (Br. p. 22) that respondent's order is invalid because it "casts a direct burden upon both the shippers of interstate commerce and the commerce itself as distinguished from a burden on the carrier, which would be indirect or incidental to the shipper or commerce itself". However, the burden on interstate commerce resulting from respondent's order is no different from those resulting from the regulations sustained by the Court in the decisions cited herein on page 12, particularly

Munn v. Illinois,
Chicago, B. & Q. R. Co. v. Iowa,
Budd v. New York,
Brass v. North Dakota,
Wilmington Transportation Co. v. Railroad Commission, and
Port Richmond & Bergen Point Ferry Co. v. Board of Freeholders.

In the latter case it was said (234 U. S. 331-332):

> "It is argued that the mere fact that interstate transportation is involved is sufficient to defeat the local regulation of rates because, it is said, that it amounts to a regulation of interstate commerce. But this would not be deemed a sufficient ground for invalidating the local action without considering the nature of the regulation and the special subject to which it relates. Quarantine and

> pilotage regulations may be said to be quite as direct in their operation, but they are not obnoxious when not in conflict with Federal rules."

The cases cited on pages 22 to 24 of petitioner's brief are so different from the instant one that comment thereon is unnecessary.

2. No "Multiple Burdens" Result.

There is likewise no force in the contention that interstate commerce is exposed to "multiple burdens". The essence of petitioner's argument in this connection is found in the assertion (Br. p. 25) that if California has power to impose such regulation "so has every other state through which the commodity must pass". No such corollary follows from the contentions of respondent here. The regulation is imposed only on local drayage of property performed wholly within a single municipality in this State and not under common control, management, or arrangement for a continuous carriage to or from a point without such municipality. The power of the State to impose such regulation does not imply the existence of power in this or any other state to regulate the rail carrier crossing its borders in the course of transporting the property to this municipality. The exclusive power of Congress to regulate the latter transportation is established by *Wabash, St. L. & Pac. Ry. Co. v. Illinois, supra.*

The argument (Br. p. 28) that if the power to regulate petitioner's rates is upheld, respondent will then have the power in the future to increase the rates "to

a point where the economic advantage of 'pool car' distribution will give way to the distribution by local wholesalers", which "would clearly be unlawful on the sole ground of discrimination", answers itself. Petitioner does not contend that the present rates established by respondent discriminate against interstate commerce or are unreasonable (Pet. p. 5). If such discriminatory or unreasonable rates were established in the future, petitioner would have a remedy.

The assertion (Br. p. 28) that "pool car distribution services such as petitioner operates survive only as long as there is a slight economic advantage over distribution through local wholesalers and intracity carriers" is unsupported by anything in the record, and the conclusion that regulation would upset any such advantage is contrary to logical inference. Respondent's order does not touch petitioner's charges for the transshipment of goods from pool cars to points beyond San Francisco by other carriers. Since the regulation applies to all intracity deliveries equally, whether from pool cars or from wholesalers and warehouses, it obviously cannot prejudice petitioner in its competitive relationship with distribution through local wholesalers and other intracity carriers.

Neither is there anything in the record to show that petitioner, in making such deliveries from pool cars in San Francisco, is itself anything but a "local intracity carrier" performing ordinary local drayage. (See R. p. 17.) The pooling of shipments for economy in transporting them to a breakbulk point is a practice of such long standing as to be a matter of common knowl-

edge, and it is equally well known that the delivery of such shipments from the pool cars is a usual and customary function of city draymen. Manifestly, therefore, petitioner is not seeking here to preserve its business or to prevent prejudice to interstate commerce; rather, it is insisting upon the right to use the public streets and highways for its profit at a competitive advantage over other local carriers. The very purpose of the City Carriers' Act is, in part, to minimize excessive use of and congestion upon the public streets and highways by regulating drayage rates so as to prevent the division of available traffic among an unnecessarily large number of carriers brought about by just such unrestrained competition in rates as petitioner seeks to maintain here.

It is evident, then, that there is no improper burden placed on interstate commerce by the action of the State here, and that it is merely a legitimate exercise of the State's power to provide for the safety and welfare of its people and to control the use of its highways, as will be further seen from the following answer to petitioner's contentions in that regard.

C. THE REGULATION OF PETITIONER'S DELIVERY RATES IS WITHIN THE STATE'S POLICE POWER AND DOES NOT VIOLATE THE FOURTEENTH AMENDMENT.

Petitioner's final contentions are that the regulation of its city delivery service is beyond the police power of the State, takes its property without just compensation, and denies it the equal protection of the laws, contrary to the Fourteenth Amendment.

In so far as petitioner's arguments in support of these contentions are based upon the effect of the commerce clause, we believe they are sufficiently answered above.

The argument (Brief, p. 35) that petitioner is being forced to become a city carrier against its will is unsound. Petitioner is a city carrier simply by virtue of the activities in which it has voluntarily chosen to engage, and the City Carriers' Act regulates petitioner only in the conduct of activities thus voluntarily undertaken. The situation is unlike *Frost & Frost Trucking Co. v. Railroad Commission,* 271 U. S. 583, 70 L. Ed. 1101, where the statute required private carriers to dedicate their service to the general public as a condition to using the highways, thus attempting to compel them to assume a different status than that voluntarily chosen.

That petitioner is not being denied the equal protection of the laws (Br. p. 37) is obvious from the fact that all other carriers in the same position and engaging in the same activities are subject to the same regulation. While deliveries made by line-haul carriers are not subject to the regulation, they are clearly not on the same footing, since the delivery is a part of the line-haul obligation and the entire transit, including the delivery, is regulated under the Interstate Commerce Act.

It is urged (Brief, pp. 31-34) that there is no relationship between the regulation of petitioner's rates and the conservation of city streets, the protection of the lives and health of the people, or the provision of

adequate and dependable service by necessary transportation agencies. It is well understood, however, that there is a reasonable and direct relationship between the regulation of motor carrier rates and congestion and safety on the public highways. The establishment of minimum rates below which carriers may not go in competing for business tends to discourage the use of the streets and highways by irresponsible operators entering and gaining a foothold in the business only by unconscionable and unreasonable rate-cutting, and to minimize the diffusion of the available traffic among many unnecessary carriers by reason of such competition. Likewise, the stablizing of rates between rails and trucks tends to keep a normal portion of the traffic on the rails, thereby relieving the streets and highways of an excessive burden. Such regulation, moreover, tends directly to promote the public safety on the streets and highways and the dependability of the service of motor carriers by preventing them from operating, as a result of unrestrained competition, at less than the cost of service, and enabling them to realize a return from their operations sufficient to maintain their trucks in a condition consistent with safety on the highways and the demands of adequate service.

The validity of the City Carriers' Act, and of its companion statute, the Highway Carriers' Act (Cal. Stats. 1935, Ch. 223, as amended; Deering's Gen. Laws Cal., Act 5129(a)), as an exercise of the police power has been upheld by the Supreme Court of the State of California in *Morel v. Railroad Commission,* 11 Cal.

(2d) 488, 81 P. (2d) 144, and *Entremont v. Whitsell,* 13 Cal. (2d) 290, 89 P. (2d) 392; and comparable legislation received the approval of this Court in *Stephenson v. Binford,* 287 U. S. 251, 77 L. Ed. 288. As the Court pointed out in the latter case, the extent to which the means adopted to achieve the legitimate end of conserving the highways conduce to that end, their efficiency, and the closeness of their relation to the end sought to be attained, are matters addressed to the judgment of the legislature rather than to that of the courts.

III. CONCLUSION.

To summarize, the transportation which the State has undertaken to regulate here is performed on the public highways of the State wholly within a single municipality and entirely independently, contractually and physically, from any other movement or transit of the traffic. The regulatory power asserted over it does not operate upon any other part of the transportation. It is territorially beyond the reach of any other jurisdiction except the federal government, which has carefully and explicitly excluded it from comprehensive federal regulation of nearly every other phase of motor carrier transportation in interstate commerce in a manner plainly evidencing the judgment of Congress that national regulation thereof is unnecessary and that it should be left to the states to regulate.

The regulation imposed by the State is reasonable and valid to conserve the State's highways and promote the public welfare. It does not discriminate

against nor seek to control interstate commerce and its effect on such commerce is only such as often has been heretofore considered and sanctioned by this Court over a period of many years.

It is urged, therefore, that no sufficient reason has been advanced by petitioner to justify the issuance of a writ of certiorari, and that the petition should be denied.

Dated, San Francisco, California,
March 26, 1941.

Respectfully submitted,
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